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Comments Of
Specialized Carriers & Rigging Association
To
Federal Highway Administration
On
Truck Length And Width Exclusive Devices

FHWA Docket Nos. 87-5 and 89-12

Advance Notice of Proposed Rulemaking
F. R. Vo. 54, No. 246
Tuesday, December 26, 1989
Pages 52951-52955

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Foreword

The Specialized Carriers & Rigging Association (SC&RA) is a national organization representing motor carriers which transport property in interstate, intrastate, and foreign commerce.

SC&RA members operate trucks, truck-tractors, semitrailers and full trailers in a variety of vehicular combinations. They routinely transport loads that are subject to federal size limits and frequently encounter varying and conflicting interpretations concerning devices that should be excluded when measuring width and length of vehicles to determine compliance with such limits.

SC&RA members strongly support the Federal Highway Administration (FHWA) efforts to establish criteria and procedures to determine the safety or efficiency enhancing devices that should be excluded when measuring length and width of vehicles for compliance with federally mandated dimensions.

Our members are hopeful this FHWA effort will reduce the unnecessary compliance problems and cost burdens imposed on them by the currently existing conflicts in interpretations.

N. Eugene Brymer

Executive Vice President

Specialized Carriers & Rigging Association

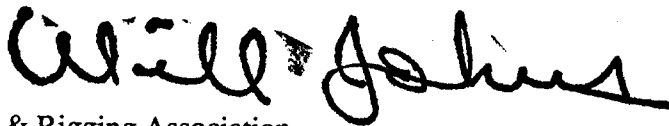


and

William Johns

Safety Consultant

Specialized Carriers & Rigging Association



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The Proposed Resolution

SC&RA agrees with FHWA that a "simpler approach is needed for administering the STAA provisions allowing certain devices to be excluded when a vehicle is measured for compliance with Federal length and width limits." We agree also that an approach that reduces the number and complexity of decisions concerning devices to be excluded would be helpful to carriers, vehicle manufacturers, and enforcement officials. SC&RA believes it would also be helpful to shippers.

However, SC&RA does not believe that FHWA will find a "simple approach" that will eliminate the need to be specific about which devices are to be excluded when measuring length and width of vehicles, loads and load securing devices. Our members have found, through experience, that there are thousands of vehicle inspectors who are tempted to come up with their own interpretations concerning devices to be excluded or included in measuring for compliance. If FHWA does not give specific examples of devices to be excluded in measuring vehicle length and width the problems of varying interpretations will be greater than they are now.

We urge FHWA to adopt a general rule that is supported by specific examples of safety/efficiency enhancing devices that are to be excluded when measuring width and length of vehicles. It is essential that FHWA provide strong leadership for the states by determining the devices to be excluded when measuring vehicle length and width. In fact, the Surface Transportation Assistance Act specifically authorizes the Secretary of Transportation to make such determinations. We believe that the Secretary should view this authorization as a mandate from Congress.

The General Rule

SC&RA agrees with the FHWA proposal to exclude from length and width measurement all devices that extend no more than 3 inches beyond the structural components of the vehicle.

The Exclusions

For semitrailers and trailers the general rule should be supported by a listing of safety/efficiency enhancing devices that are to be excluded so that the potential for varying interpretations is minimized. It is imperative that load holding/securing devices be excluded from width measurements and listed with other devices to be excluded. Load holding devices have been the subject of varying interpretations because the placement and

dimensions of such devices vary, on flat-bed and low-boy trailers, according to the nature and dimensions of cargo being transported. Yet these devices are vitally important to highway safety because they protect all highway users from the potential of accidents resulting from cargo being spilled on the highways. Load holding/securing devices should be excluded provided that they are within the 3 inch dimensions provided by the general rule.

SC&RA is not aware of any reportable accident that has resulted from safety devices, including load holding/securing devices, extending to no more than 3 inches beyond the structural components of the vehicle.

For truck-tractors and trucks, SC&RA would vigorously oppose any limit on the extent to which side mirrors, turn signal lamps, handholds, spray suppressant devices, and similar components can extend from each side of a vehicle. These devices are critical to the safe operation of trucks. If they are limited then safety will be adversely affected. The rearward vision of truck drivers would be reduced. The other highway users would not be as well informed about what a truck is doing, or may do, if they do not have as good a view of truck turn signals and truck driver reflections in mirrors.

Advisory Committee Recommendation

SC&RA recommends the establishment of a committee to advise the FHWA on devices and components that should be excluded from length and width measurements. The membership of the committee would represent the various interest groups: carriers, enforcement agencies, vehicle manufacturers, shippers and FHWA. The committee would deal with recurring problems of interpretations, and matters of vehicle design and design of components such as load securing devices. The formation of such a committee is needed to develop nationally uniform interpretations and to minimize the potential for interpretations by individuals made on the spur of the moment at roadside check points.

An advisory committee could handle the difficult problem spotlighted by FHWA of determining which components on truck-tractors and trucks should be excluded from measurements.

SC&RA would seek membership on such an advisory committee. SC&RA members routinely transport cargos of varying sizes and configurations on flat-bed and low-boy trailers and they are frequently subjected to improper interpretations of laws and regulations governing vehicle sizes. By serving on the committee we could speak with authority on problems and practices relating to measurement of size and length of vehicles. We could work objectively to assure practical considerations and to promote recommendations that would not adversely affect highway safety.

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Answers to Questions

Following are SC&RA answers to questions posed by FHWA:

Question 1. What are the safety and enforcement implications of (1) requiring that certain categories of vehicle components be included in a length or width measurement; and (2) allowing a blanket exclusion for other devices extending no more than 3 inches beyond the outer dimensions of the components that must be included in length and width measurements?

SC&RA Answer: We do not believe that there are any adverse safety implications for a general rule that would require inclusion of certain components in length or width measurement and allowing a blanket exclusion for other devices extending no more than three (3) inches. In fact, we believe that safety would be better served by such a blanket exclusion because carriers, shippers and manufacturers would have more freedom to assure the proper placement and strength of load securement devices. There would be greater freedom in the placement of safety devices, such as mid-vehicle turn lights, for the protection of the motoring public.

Question 2: What other alternatives are there for simplifying the present process for determining which devices should be included or excluded when measuring the length or width of a vehicle?

SC&RA Answer: We believe that the process can be made more effective by adoption of a general rule, supported by a listing of specific items that are to be excluded, and supported by an advisory committee. FHWA must be careful that in attempting to simplify the process on the Federal level it does not bring about a greater complexity of interpretations on the state levels. The goal of FHWA should be simplification without weakening its Federal leadership.

Question 3: The following are possible categories for components of trailers: (1) Structural (needed to support or convey the load), (2) load protection, (3) protection of trailer components, and (4) vehicle safety. Are there any other categories that would be useful for determining whether a device should be included or excluded from a length or width measurement?

SC&RA Answer: This listing of categories adds emphasis to the SC&RA position that there should be a general rule supported by a listing of specific devices to be excluded. For example, the category of (1) Structural (needed to support or convey the load) is acceptable provided that a listing of specific devices/components to be excluded contains "tire bulge", "tire chains", "trailer bulge" and similar items that support the load but may extend beyond the legal width limit temporarily.

The category of (2) load protection should be changed to read: load protection, load holding, load securement. This is needed so that devices which protect the public (such as straps and chains) are included in the category, and devices which are used to secure such devices (such as chain binders and pockets) are included.

(3) Protection of trailer components should be changed to: protection of vehicle components, so that if a device is designed to protect against damage to a component on the tractor, such as damage of an air line to the rear brakes of a tractor, it would be included in the category.

The category of (4) vehicle safety should be changed to: vehicle safety, driver safety, public safety to include devices that are needed to cover all aspects of safety, and not just safety of the trailer.

Question 4: How would the proposed approach or an approach offered in response to question number 2 impact: Vehicle manufacturers? Motor carriers? Shippers? Highway operations?

SC&RA Answer: We believe that the approach offered by SC&RA in response to question number 2 offers the best protection of the interests of the manufacturers, motor carriers, shippers, and highway users. It would also look after the interests and needs of the enforcement community.

Question 5: Under existing Federal regulations, States must exempt specified devices from the measurement of vehicle length and width. They may exempt safety devices that do not extend more than three (3) inches from the side of a vehicle. Does the problem of determining what new devices should be exempted from length and width measurements warrant further preemption of State authority by requiring them to allow a blanket 3-inch exemption?

SC&RA Answer: The current problem of interpretations which vary from one inspector to another and from State to State justify FHWA's efforts to simplify

the procedure and to get national uniformity of length and width measurement standards. If FHWA adopts a general rule supported by a listing of specific items to be excluded when measuring width and length, there will be fewer problems of varying interpretations. If FHWA establishes an advisory committee that includes representation of state agencies the impact of Federal preemption will be less great because the states will then have the opportunity to provide input to the FHWA that can be utilized when it makes decisions on width and length measurements.

Question 6: Current regulations provide that the length of a semitrailer and a full trailer is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rear most transverse load carrying structure. Current regulations also provide that the width of the trailer is measured across the side most load carrying structures, support members, and structural fasteners. Should these regulations be clarified and if so, how?

SC&RA Answer: SC&RA believes that clarification of these regulations should be the subject of study and recommendation by an advisory committee, such as the committee recommended by SC&RA.

Question 7: There are no regulations on how buses or other commercial vehicles are to be measured. Are they needed? If so, how should they read?

SC&RA Answer: For the purpose of national uniformity of interpretations, we believe that FHWA should establish standards on measurement of all commercial vehicles. The procedures to be followed by FHWA should be the same as those recommended herein by SC&RA: a general rule, specific examples in support of the general rule, and an advisory committee to consider problems and to make recommendations to FHWA.

Question 8: Should there be a limit on how far a width exclusive device may extend, if more than three (3) inches, from the side of a vehicle (i.e. rearview mirrors, turn signal lamps, hand-hold for cab entry and egress, and splash and spray suppressant devices)? If so, what should the limit be?

SC&RA Answer: FHWA and the states should not impose a limit on such devices. The devices should be allowed to extend as far as necessary for the safety of operations of the truck and for the safety of other highway users.

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Motor carriers and manufacturers do not extend the devices further than necessary for safety and practicality of operations and so there is no need for a government imposed restriction.

Question 9: Are there any devices on trailers manufactured between 1983 and 1987 that would be eliminated by the proposed regulations? If so, what are they? Should they be grandfathered? What should the grandfather date be?

SC&RA Answer: We are not aware of specific devices on trailers manufactured between 1983 and 1987 that should be grandfathered. However, we believe that any device which promotes safety/efficiency that does not fall within the 3 inch allowance should be grandfathered if the device existed on a trailer manufactured before the date FHWA adopts a final rule on the measurement of vehicles for width and length compliance.

Conclusions:

SC&RA agrees with FHWA that there is a need to simplify the process of determining which safety/efficiency devices should be excluded from measurement of vehicle length and width. In seeking simplification FHWA must strengthen, not weaken, its position of Federal leadership toward the goal of national uniformity of standards for measuring length and width of vehicles.

SC&RA supports adoption of a Federal rule which provides that all devices that extend no further than 3 inches beyond the structural components of a vehicle are excluded from length and width measurements. We believe that FHWA should also provide a listing of specific devices to be excluded from measurement, and that FHWA should establish an advisory committee composed of carriers, state officials, manufacturers, and shippers, to make recommendations that will eliminate problems of interpretations and provide guidance for including or excluding new and innovative devices in width and length measurements.

SC&RA members are available to FHWA for advice and guidance on the matter of length and width measurements. Collectively our members have hundreds of years of experience in dealing with the measurement problems. They are willing to meet with Federal officials at any time to discuss programs and procedures for the solution of such problems. They are willing to participate in demonstration programs and other activities which will lead to greater uniformity of standards for measurement of vehicle widths and lengths.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 28, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 18, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 26044

Petitioner: Aviation Safety Institute (John B. Galipault and Harry A. Langdon).

Regulations Affected: 14 CFR 121.545.

Description of Petition: The petitioner proposes to amend Section 121.545, Manipulation of Controls, to specify the conditions under which a second in command pilot may perform takeoffs and landings under operations in this part. These stipulations include total flight time in the type of aircraft, weather and runway conditions in order to perform takeoffs and landings, and mechanical condition of the aircraft.

Petitioner's Reason for the Request:

The inappropriate pairing of low time pilots in command and seconds in command has greatly intensified public concern for flight safety during takeoffs and landings. The petitioner believes that while some air carriers actively attempt to avoid illogical pairings, there is a pressing need to establish an industry-wide and uniform application of the amendment proposed in this petition.

Docket No.: 26005

Petitioner: Air Transport Association of America (ATA).

Regulations Affected: 14 CFR 91.75.

Description of Petition: The ATA, on behalf of its member airlines and other similarly situated air carriers, petitions for an amendment to section 91.75(a) of the FAR to permit a pilot deviation from an ATC clearance in response to a traffic alert and collision avoidance system (TCAS) resolution advisory.

Petitioner's Reason for the Request:

The petitioner believes that absent such relief, apprehension of the consequences of a violation action will possibly cause the flight crew to delay response or to not respond to a resolution advisory, thus defeating the intended purpose of implementing TCAS.

Docket No.: 26048

Petitioner: National Test Pilot School (NTPS).

Regulations Affected: 14 CFR 21.191.

Description of Petition: The petitioner requests a rulemaking to establish a new experimental purpose which would allow the NTPS to train test pilots and flight test engineer students in ex-military and experimental type aircraft owned, operated or leased by NTPS for use in the NTPS flight test training curriculum.

Petitioner's Reason for the Request:

The petitioner believes that the ability to use ex-military and experimental aircraft in their flight test training program will greatly enhance the knowledge and expertise of the graduate test pilots and flight test engineers of the NTPS such that their training can then be comparable to that of the military and foreign test pilot schools which use military and civilian aircraft in their curriculum.

[FR Doc. 89-29664 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-12-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87-5 and 89-12]

RIN 2125-AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public comment is requested on what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097) as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions. The present system does not provide any way for innovators or the States to receive prompt and authoritative guidance about the status of new devices. Therefore, a new approach is proposed.

DATE: Comments on this docket must be received on or before March 28, 1990.

ADDRESS: Submit written, signed comments, to FHWA Docket No. 89-12, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

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SUPPLEMENTARY INFORMATION:**Width Provisions**

The Federal-Aid Highway Act of 1956 (Pub. L. 84-627, 70 Stat. 374) limited vehicle width to a maximum of 96 inches on Interstate highways and allowed devices to extend beyond this width only if they were allowed by State law or regulation in effect on July 1, 1956. The Federal-Aid Highway Act of 1976 (Pub. L. 94-280, 90 Stat. 425) increased the maximum width to 102 inches for buses on Interstate highways with 12-foot wide lanes.

A June 28, 1979 Notice of Interpretation (NOI) published in the Federal Register at 44 FR 37710 adopted the American Association of State Highway and Transportation Officials' (AASHTO) definition of vehicle width as "the total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding safety devices and tire bulge due to load." In addition to load-induced tire bulge, the only approved safety devices permitted to exceed 96 inches in width were rearview mirrors, turn signal lamps, and hand-holds for cab entry/egress.

In a Notice of Interpretation (NOI) published in the Federal Register at 46 FR 32 on January 2, 1981, the FHWA held that States could exclude additional safety devices from the 96-inch vehicle width limit, provided the overall width did not exceed 102 inches, i.e., the safety devices could extend 3 inches on either side of the vehicle.

The STAA, as amended, extended the 102-inch width to all commercial vehicles, including buses, on the National Network (NN), which consists of the Interstate System and other Federal-aid primary highways designated in 23 CFR part 658, Appendix A. Hawaii was allowed to keep its 108-inch maximum vehicle width limit.

Length Provisions

In addition to this width limit, the STAA established length limits for semitrailers and trailers. The minimum length limit for a semitrailer in a truck tractor semitrailer combination is 48 feet unless a longer semitrailer was in use in a State on December 1, 1982. In this case, the longer length is grandfathered

and the State must continue to allow the use of semitrailers up to this length on the NN.

The length limit established for each semitrailer or trailer in a double or twin-trailer combination is 28 feet (28½ feet for existing semitrailers or trailers which were actually and lawfully operating in a State on December 1, 1982 within a 65-foot overall length limit). Neither the tractor semitrailer nor the tractor twin-trailer combination is subject to overall length limits on the NN.

Pursuant to its authority under section 411(d) of the STAA, the FHWA designated automobile and boat transporters "specialized equipment" and established minimum overall length limits for their operation on the NN. The limits are a 65-foot minimum overall length (75-foot if stinger-steered), plus cargo overhangs of 3 feet to the front and 4 feet to the rear.

There are no Federal laws or regulations regarding the length of buses or straight trucks. Any length limitations on such vehicles are set by the individual States.

The STAA also gave the Secretary of Transportation authority to determine what safety and energy conservation devices, necessary for safe and efficient operation of commercial motor vehicles, would be excluded when measuring vehicle length (section 411(h)) (49 U.S.C. App. 2311(h)) and what safety devices necessary for the safe and efficient operation of motor vehicles would be excluded when measuring vehicle width (section 416(b)) (49 U.S.C. App. 2316(b)). Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Current Regulations and Interpretations

A final rule implementing sections 411(h) and 416(b), among other provisions, was published in the Federal Register at 49 FR 23302 on June 5, 1984 and codified at 23 CFR part 658. It reiterated the policy of permitting States to exclude from vehicle width measurements those safety devices that do not extend more than 3 inches from either side. It also provided that farm tractors and similar equipment are exempt from Federal width limitations on the NN, leaving regulation to the individual States, and permitted the

vehicle width limit of 102 inches to extend to its approximate metric equivalent of 2.6 meters (102.36 inches). In addition, this rule defined length exclusive devices as all noncargo carrying appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer.

Another NOI, concerning length exclusive devices, was published in the Federal Register at 61 FR 1567 on January 13, 1986. It specifically excluded 6- and 8-inch front locking devices (bolsters) and a 12-inch (in the "up" position) rear lift tailgate from length measurements. The NOI declined to exclude a 7-foot front trailer frame extension from length measurements on grounds that it was load bearing but reiterated that this did not necessarily preclude its use because it could be recognized as a length exclusive device by the States.

The latest NOI, published in the Federal Register at 52 FR 7834 on March 13, 1987 held that lift gates (not over 24 inches from the rear of the trailer in the "up" position), B-train assemblies and about 35 other devices qualified as length or width exclusive devices as defined in 23 CFR 658.5(e) and (g). It also provided that the width of a trailer be measured across the sidemost load carrying structures, support members, and structural fasteners and that the length of a semitrailer be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure.

The March 13, 1987, NOI also opened a docket (Docket No. 87-5) to which the public could submit technical comments on the interpretations. In case of inaccuracies, the interpretations would be modified. A total of 54 responses were received, from 29 carriers, 10 shippers, 4 States and the District of Columbia, 2 trailer manufacturers, 2 associations (American Trucking Associations—ATA, and Truck Trailer Manufacturers Association—TTMA), 2 State legislators, a truck manufacturer, a port authority, a law firm, and an individual. Table 1 summarizes the comments received, the number and type of commenters, and the FHWA response.

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TABLE 1.—SUMMARY OF COMMENTS ON MAR. 13, 1987 NOTICE OF INTERPRETATION FHWA DOCKET NO. 87-5

Comments	Type of commenters	Number of comments	Response
1. Indicated that there was a discrepancy between this NOI and a notice of proposed rulemaking (NPRM) published on February 26, 1987 in FHWA Docket No. MC-127 (52 FR 5892) in regard to how trailers were to be measured and favored the provisions in the NPRM.	Carriers..... Shippers..... Law Firm..... Individual.....	28 8 1 1	There was no discrepancy because the NPRM concerned the appropriate location of placards and other safety equipment and not vehicle length or width limits.
2. Non-structural rub rails and structural fasteners not to exceed ¼ inch should be exempt from width measurements.	Carriers..... Shippers..... Truck Manufacturer..... Law Firm.....	27 9 1 1	Non-structural components will be covered in the proposed new approach, but structural components will not be exempted.
3. Non-structural protrusions should be exempt from length measurements.	Carriers..... Shippers..... Association..... Legislators.....	24 9 1 2	This will be covered in the proposed new approach.
4. Manufacturing deviations up to ¼ inch should be exempt from width measurements.	Carriers..... Shippers.....	27 7	If applied to a structural component, it would increase the width beyond the legal limit.
5. Special reinforcement at rear and side door and kingpin locations should be exempt from length and width measurements.	Carriers..... Shippers.....	25 9	Reinforcements are structural and therefore are included in length or width measurements.
6. There should be a grandfather clause to exempt devices on trailers manufactured between 1983 and 1987.	Carriers..... Shippers..... Legislators..... Law Firm.....	21 8 2 1	This is being considered in this rulemaking.
7. Trailer side-wall bulge due to bulk products should be exempt.	Carriers..... Shippers..... Trk. Manufacturer..... Association.....	22 8 1 1	Addressed in proposal.
8. Automobile transporter load carrying devices should be exempt when also used as tie-downs.	Carriers.....	3	No consideration is being given to exempting load carrying devices.
9. Trailers should be measured from load-bearing-wall to load-bearing-wall.	Individual.....	1	How to measure trailers is being considered in this rulemaking.
10. Manufacturing deviations up to ½ inch should be exempt from length measurements.	Trailer Manufacturer.....	1	If applied to a structural component, it would increase the length of the vehicle beyond the legal limit.
11. Steps should be exempt from length measurements.	Truck Manufacturer.....	1	Addressed in proposal.
12. One half inch in overall width should be exempt when measuring trailer width from a point on one side to a point directly across on the opposite side.	Trailer Manufacturer.....	1	This would increase the width of the vehicle beyond the legal limit.
13. The present exemption, "wall variations from true flat," should be explained.	Carrier..... State..... State.....	1 1 1	Addressed in proposal.
14. Questioned the safety of a 5-foot rear aerodynamic device.	State.....	1	No safety problems have been reported.
15. Objected to allowing devices to extend up to 3 inches from the sides of vehicles.	State.....	1	The STAA authorized the Secretary to exclude devices necessary for the safe and efficient operation of motor vehicles from width measurements.
16. Exempt safety devices on sides of trailers should be of hinged or breakaway design.	State.....	1	Devices must be sufficiently sturdy for their intended use.
17. One commenter asked if there was a conflict between the existing 12- and 24-inch lift tailgate.	Port Authority.....	1	There is no conflict. Lift tailgates may extend up to 24 inches from the rear of the vehicle.
18. One commenter recommended that front couplers for road-end-rail semitrailers not be allowed to exceed the swing radius of the trailer.	Association.....	1	They may not extend beyond the swing radius of the trailer under the existing interpretation.

Issue

If nothing else, the above table illuminates the problems of enforcement and identifying devices that should be excluded from measurements of vehicle length or width. Contributing to these problems are the vagueness of statutory guidelines and the ingenuity of vehicle

innovators seeking to utilize new devices to improve safety or productivity of vehicles covered by the STAA. As a result, the process for determining which devices qualify as length or width exclusive has become a burden both to the industry and the FHWA.

FHWA's interpretations have described devices excluded from length and width measurements in both generic and specific terms. Examples of generic descriptions are aerodynamic devices and electrical connectors. Examples of specific descriptions are resilient bumper blocks, lift gates, handholds,

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pintle hooks, ladders, steps, stake pockets, etc. This illustrates the difficulty of trying to make a comprehensive list of devices that are included or excluded in the measurement of a vehicle's length or width. Generic descriptions are not inclusive enough and specific descriptions are too exclusive. Thus, even though four rulemakings and notices of interpretations have identified some 55 devices as length or width exclusive to date, consideration of others is pending with more, no doubt, to follow.

FHWA believes that a simpler approach is needed for administering the STAA provisions allowing certain devices to be excluded when a vehicle is measured for compliance with Federal length and width limits. An approach that reduces the number and the complexity of the decisions should help vehicle manufacturers, carriers, and State enforcement officials.

Proposed Resolution

To address this issue, the FHWA is considering an approach that would exclude from length and width measurement all devices that extend no more than 3 inches beyond the structural components of the vehicle. For semitrailers and trailers, the components to be included in length or width measurements are the structural elements of the floor, walls or top, including stiffeners and fasteners and all load-carrying elements.

For other commercial motor vehicles, the components to be included in the width measurement are less easy to specify. That is particularly true of truck tractors (including the power units of automobile and boat transporters) but also applies to buses and straight trucks. Many of the basic components of a tractor (cab, fenders, bumpers, wind deflectors, mud flaps) vary significantly in shape, placement and size depending on the manufacturer and type of vehicle. One possibility is to define the components to be included in the width measurement as those not specifically excluded by law, regulation, or notice published in the Federal Register. FHWA would prefer a definition closer to common usage or industry standards. We encourage the States and industry to suggest a simple, workable method to measure the width of tractors, straight trucks and buses.

Existing policy assumes that it is necessary to review devices that extend vehicle length and width to ensure highway safety. However, any device extending beyond the 102-inch width or vehicle length dimensions, whether for purposes of safety or efficiency,

presents some risk to highway safety. The proposed approach acknowledges this fact. Further it will neither render vehicles less safe nor stifle innovation. Also, it will provide for more uniform interpretation by the States and industry of devices to be included or excluded from length or width measurements.

Previous regulations that excluded from width measurements devices not extending more than 3 inches from the side of a vehicle would be superseded by this proposal. Such regulations would, therefore, be without further force or effect.

We are considering whether a limit should be imposed on devices which, under 23 CFR 658.5(g), may extend more than 3 inches from each side of a vehicle (i.e., rearview mirrors, turn signal lamps, handholds for cab entry and egress, and splash and spray suppressant devices), and if so, what the limit for each device should be.

Referring to table 1, comment numbers 2 (in part), 4, 5, 10, and 12 concern exemptions for minor structural features or tolerances for manufacturing deviations. Comment number 8 concerns load carrying components. Under the proposed approach these structural features or tolerances would not be considered length or width exclusive.

Comment numbers 2 (in part), 3, and 11 concern nonstructural components and, therefore, would be considered length or width exclusive under the proposed approach if they do not extend beyond 3 inches.

Comment numbers 6, 7, and 9 are being addressed in this rulemaking. Responses to the remaining comments are adequately covered in table 1.

Request for Comments

The FHWA solicits comments from all interested persons on this proposal. Specific comments are sought in regard to the following:

1. What are the safety and enforcement implications of (1) requiring that certain categories of vehicle components be included in a length or width measurement; and (2) allowing a blanket exclusion for other devices extending no more than 3 inches beyond the outer dimensions of the components that must be included in length and width measurements?

2. What other alternatives are there for simplifying the present process for determining which devices should be included or excluded when measuring the length or width of a vehicle?

3. The following are possible categories for components of trailers: (1) Structural (needed to support or convey the load), (2) load protection, (3) protection of trailer components, and (4)

vehicle safety. Are there any other categories that would be useful for determining whether a device should be included or excluded from a length or width measurement?

4. How would the proposed approach or an approach offered in response to question number 2 impact:

Vehicle manufacturers?
Motor carriers?
Shippers?
Highway operations?

5. Under existing Federal regulations, States must exempt specified devices from the measurement of vehicle length and width. They may exempt safety devices that do not extend more than 3 inches from the side of a vehicle. Does the problem of determining what new devices should be exempted from length and width measurements warrant further preemption of State authority by requiring them to allow a blanket 3-inch exemption?

6. Current regulations provide that the length of a semitrailer and a full trailer is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure. Current regulations also provide that the width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners. Should these regulations be clarified and if so, how?

7. There are no regulations on how buses or other commercial vehicles are to be measured. Are they needed? If so, how should they read?

8. Should there be a limit on how far a width exclusive device may extend, if more than 3 inches, from the side of a vehicle (i.e., rearview mirrors, turn signal lamps, hand-holds for cab entry and egress, and splash and spray suppressant devices)? If so, what should the limit be?

9. Are there any devices on trailers manufactured between 1983 and 1987 that would be eliminated by the proposed regulations? If so, what are they? Should they be grandfathered? What should the grandfather date be?

Comments on this advance notice of proposed rulemaking will be available for public inspection both before and after the closing date at the above address. All comments received during the comment period will be considered before further rulemaking action is undertaken.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a

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significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared if necessary, based upon the data received in response to this notice.

Based upon the information available to FHWA at this time the action taken in this rulemaking will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

(Secs. 411 and 416 of Pub. L. 97-424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.43)

List of Subjects in 23 CFR Part 658

Grant programs—transportation.
Highways and roads. Motor carrier—
size and weight.

Issued on: December 15, 1989.

T. D. Larson,
Administrator.

[FR Doc. 89-29913 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CC-CO-10-89]

RIN 1545-AN76

Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations at §§ 1.382-1T and 1.382-2T were published in the Federal Register on August 11, 1987, 52 FR 29663, to provide guidance regarding what constitutes an "ownership change" under section 382, after which certain corporate attributes, such as net operating loss

carryforwards, are limited. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is amending the temporary regulations under section 382 of the Internal Revenue Code (Code) to grant the Service authority to issue revenue rulings (or other guidance in the Internal Revenue Bulletin) to provide additional exceptions under § 1.382-2T(h)(4)(x) to the operation of the option attribution rules at § 1.382-2T(h)(4)(i) to loss corporations. This amendment of the regulations will give the Treasury Department greater flexibility in providing additional exceptions to the attribution rules of § 1.382-2T(h)(4)(i), as circumstances justifying those exceptions are identified. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be mailed by February 26, 1990. The regulations are proposed to be effective on the date the final regulations are published in the Federal Register.

ADDRESS: Send comments or requests for a public hearing to: Internal Revenue Service, Attention: CC-CORP:R [CO-10-89], Room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC-CORP:1) or telephone 202-566-3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Rules and Regulations portion of this issue of the Federal Register contains temporary regulations that amend the temporary regulations at § 1.382-2T by adding a new paragraph (h)(4)(x)(Z). The final regulations which are proposed to be based on the temporary regulations would be added to part 1 of Title 26 of the Code of Federal Regulations. As proposed, the final regulations would grant the Service the authority to designate in the Internal Revenue Bulletin additional options that would be excepted from the option attribution rules of § 1.382-2T(h)(4)(i).

For the text of the temporary regulations, see T.D. [8277] published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the amended regulations.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Keith E. Stanley, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89-28794 Filed 12-22-89; 8:45 am]

BILLING CODE 9330-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: On September 6, 1988, the State of Illinois submitted to OSM a

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Academy of Sciences-National Research Council (NAS/NRC) recommendations for nutritional supplementation of copper in feeds remain at low levels, that is, 8 ppm for poultry and 6 ppm for swine. (See "Nutrient Requirements of Poultry," 8th Rev. Ed. 1984; "Nutrient Requirements of Swine," 9th Rev. Ed. 1988; National Academy Press, Washington, DC.) The NAS/NRC nutritional recommendations are generally accepted as minimum requirements in the livestock and poultry industries. It has not been necessary for FDA to take regulatory action, based on use of excessive levels of copper in animal feed, since the agency published the proposal in 1973. The agency has not received any reports of human or animal health problems associated with the addition of copper salts to animal feed. Results of the U.S. Department of Agriculture's testing for residues of copper in the edible portions of hogs and broilers in recent years support the conclusion that copper is not being added to the diets of those species at excessively high levels. Since 1973, FDA has received new scientific literature concerning human safety and the environmental effects of copper that is added to animal feed. None of this literature causes new concerns about the safety of current use levels of copper in animal feed. In addition, the agency has affirmed that copper gluconate, copper sulfate, and cuprous iodide are GRAS as direct human food ingredients (49 FR 24118; June 12, 1984). Finally, the mere passage of time in the years since the agency issued the proposal suggests that publication of a final rule at this time would not be appropriate.

FDA has concluded that the available data and information do not require restricting supplemental levels of copper salts in swine and poultry feeds to 15 ppm. As a result of the review of all the available data, and considering the comments submitted in response to the 1973 proposal, the agency has concluded that the 1973 proposal should be withdrawn. The agency concludes that the use of copper in animal feed for nutritional purposes can be regulated adequately under 21 CFR 582.80 without establishing quantitative limits on such use.

However, the withdrawal of the 1973 proposal does not constitute an endorsement of the use of levels of copper above nutritionally-required amounts in animal feeds. Regulatory action will be considered for animal feeds containing copper compounds that are found to be adulterated or misbranded under the Federal Food, Drug, and Cosmetic Act. Since

publication of the September 14, 1973 proposal, the agency has made available Compliance Policy Guide 7126.11, entitled "The Status of Vitamins and Minerals in Type B and Type C Medicated Feed and in Non-medicated Feed" (published July 21, 1976, as revised June 1, 1986). That document states, among other things, that FDA will not object to the marketing of feeds that contain concentrations of nutrients that are reasonably consistent with sound nutritional practice. In the future, if the Agency determines that the use at high levels of copper compounds as feed ingredients is widespread, or the agency receives new evidence that current use levels present risks to the health of humans or to the environment, FDA will consider whether to take a more aggressive role in the regulatory control of copper compounds.

Therefore, the proposal to amend 21 CFR parts 121 and 135 (currently 21 CFR parts 582 and 500, respectively), published in the Federal Register, of September 14, 1973 (38 FR 25694), is hereby withdrawn.

The Center for Veterinary Medicine has concluded that, because this action is the withdrawal of a proposal and therefore does not change the regulatory status of copper for use in animal feed, this action is a type that does not require the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act.

This notice is issued pursuant to sections 201(s), 409, 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Copies of the comments, related correspondence, and scientific literature received by FDA since the publication of the proposal are on file and available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m. Requests should be identified with the docket number found in brackets in the heading of this document.

Dated: March 12, 1990.

Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 90-6343 Filed 3-20-90; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87-5 and 89-12]

RIN 2125-AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) in the Federal Register on December 26, 1989 (54 FR 52951). In it, the FHWA requested comments from all interested parties to determine what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) [Pub. L. 97-425, 96 Stat. 2097] as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions.

The comment period is presently scheduled to close March 28, 1990. The FHWA has received a petition from the Truck Trailer Manufacturers Association to extend this closing date to June 1, 1990, in order for them to obtain measurements of new, in-service, and repaired semitrailers; to describe the methods of manufacture; and to estimate the economic impact of the proposal in the ANPRM on manufacturers, carriers, shippers, and consumers. After carefully considering the request, the FHWA has decided to provide the additional opportunity for comment.

The comment period is, therefore, being extended to Friday June 1, 1990.

DATES: Comments on this docket must be received on or before June 1, 1990.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 89-12, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t.,

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Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Authority: Secs. 411 and 416 of Pub. L. 97-424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 13, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-6420 Filed 3-20-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; notice of hearing and extension of comment period.

SUMMARY: On December 22, 1989, Pennsylvania Department of Environmental Resources—Bureau of Mining and Reclamation submitted to OSM proposed regulatory amendments to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977. OSM announced receipt of the amendment in the February 26, 1990, *Federal Register* (55 FR 6647) and solicited public comments on the proposed regulatory changes. The February 26, 1990, notice stated that the public comment period would end on March 28, 1990, and if a hearing on the amendment is requested, that the hearing would be held on March 23, 1990, at the Penn Harris Motor Inn, Camp Hill, Pennsylvania.

Several individuals requested that a hearing be held and also requested that the place of the hearing be changed to a location in Western Pennsylvania. OSM is honoring this request and in order to give interested parties ample notification of the change in hearing location, the date of the hearing has also been changed. In consequence, the

deadline for submitting public comments has been extended.

This notice sets forth the times and location of the pending public hearing, and the extended deadline that public comments can be submitted to OSM regarding the adequacy of the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m. on April 8, 1990, to ensure consideration in the rulemaking process. The public hearing will be held at 9:00 a.m. on April 3, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4682.

The public hearing will be held at the Radisson Hotel Pittsburgh, 101 Mall Boulevard, Monroeville, Pennsylvania 15046.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone (717) 782-4036.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-6407 Filed 3-20-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 168a

[DoD Instruction 3218.2a]

National Defense Science and Engineering Graduate Fellowships

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes the following part to govern the National Defense Science and Engineering Graduate (NDSEG) Fellowship Program, DoD's newest fellowship program. The part implements policies and procedures contained in a new statutory provision, 10 U.S.C. 2191, that was added by section 843 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Pub. L. 101-189). As required by 10 U.S.C. 2191, a regulation governing the specifics of the NDSEG fellowship program will be published at a later date and codified as 32 CFR part 168b.

The NDSEG fellowship program was created by the Department of Defense Appropriations Act, 1989. DoD supported the first class of NDSEG fellows beginning in the fall of 1989.

Section 9096 of the Department of Defense Appropriations Act, 1990 (Pub. L. 101-165) funded the program for a second year. As a result, DoD will support a second class of fellows for a three-year period beginning in the fall of 1990. DoD will select the fellows from the pool of applicants that responded to an announcement that closed in January 1990.

DoD intends to continue to NDSEG fellowship program, subject to the availability of Congressional authorizations and appropriations. The next NDSEG competition, for fellowships beginning in the fall of 1991, would be conducted in the fall and winter of 1990.

DATES: Comments should be forwarded no later than April 20, 1990.

ADDRESSES: Office of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology), room 3E114, the Pentagon, Washington, DC 20301-3080.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, telephone 202-694-0205.

SUPPLEMENTARY INFORMATION: A single brochure describes the three DoD programs that provide portable fellowships for graduate study in science and engineering; the NDSEG

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